STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN THOMAS,

Defendant-Appellant.

UNPUBLISHED
August 3, 1999

No. 208818
Wayne Circuit Court
LC No. 97-003214

Before: Doctoroff, P.J., Markman and J.B.Sullivan*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of one count of arson of a dwelling house, MCL 750.72; MSA 28.267, and one count of attempted arson of a dwelling house, MCL 750.72; MSA 28.267 and MCL 750.92; MSA 28.287. Defendant was sentenced to concurrent terms of eight to twenty years' imprisonment for the arson conviction, and five to ten years' imprisonment for the attempted arson conviction. Defendant now appeals his convictions as of right. We affirm.

. Defendant first argues that there was insufficient evidence presented at trial to prove that he was the person who set the fires at the homes on Lakepointe and Cedargrove. Defendant further asserts that the prosecution's case was based upon speculation and there was no factual basis for the trial court's verdict. We disagree.

When reviewing an issue of the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolford*, 189 Mich App 478, 479-480; 473 NW2d 767 (1991).

> The evidence is sufficient if the prosecution proves its theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant may provide. The prosecutor is not required to present direct evidence linking the defendant to the crime. Circumstantial evidence and reasonable inferences arising from the evidence may

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> constitute satisfactory proof of the elements of the offense. Intent may be inferred from all the facts and circumstances. (Citations omitted.) *Wolford, supra*, 189 Mich App 480.

In this case, the prosecution presented sufficient evidence from which a rational trier of fact could conclude that defendant was responsible for the fires at 14674 Cedargrove and 9141 Lakepointe in the City of Detroit. There was testimony that defendant made threats against Clark the day before the fires were set, and against Carr on that same night. There was also evidence that a gold Beretta was seen driving away from the house on Cedargrove after Baytops heard glass breaking and saw flames in front of Clark's house. Defendant was also seen with a gold Beretta at the home on Lakepointe at approximately 6:00 p.m. and again at 10:00 p.m. the night the fires were set. Furthermore, Hawkins testified that she loaned the gold Beretta to defendant at approximately 6:00 p.m. and again at approximately 11:00 p.m. on that evening. There was also testimony that defendant showed reluctance to talk to the police when they went to arrest him.

Viewing the evidence in a light most favorable to the prosecution, we find that there was sufficient evidence presented at trial from which a rational trier of fact could find beyond a reasonable doubt that defendant was the person who set the fires at 14674 Cedargrove and 9141 Lakepointe in the City of Detroit.

Defendant next argues that the trial court improperly applied MCL 750.72; MSA 28.267 and MCL 750.92; MSA 28.287 to the facts in finding him guilty of attempted arson of a dwelling house at 14674 Cedargrove. More specifically, defendant argues that the proofs at trial merely showed that there was damage to the front lawn and there was absolutely no proof that there was fire damage to the "dwelling house" or that defendant intended to burn the dwelling house. Defendant asserts that the front lawn or yard is not included as a part of a dwelling house in the statute and therefore the burning of the lawn cannot constitute arson of a dwelling house. We find this argument to be without merit.

Defendant was convicted of attempted arson of the house on Cedargrove, not arson. An attempt consists of: (1) an intent to do an act or to bring about certain consequences which would in law amount to a crime, and (2) an act in furtherance of that intent which goes beyond mere preparation. *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). Mere preparation consists of making arrangements or taking steps necessary for the commission of a crime, and attempt consists of some direct movement toward commission of the crime which would lead immediately to the completion of the crime. *Id*.

In this case, there was testimony that there was a molotov cocktail thrown at the house at 14674 Cedargrove. In the expert opinion of Officer Varnas, the bottle was thrown at the window in the front of the house and broke the window, but was not able to penetrate the house and so bounced off the window and fell on the ground, causing the grass to burn. Baytops testified that a gold Beretta was driving down the street moments after she heard the glass breaking and numerous witnesses testified that defendant was driving the gold Beretta the night of the fire.

After a review of the facts, we find defendant's argument of improper application of MCL 750.72; MSA 28.267 and MCL 750.92; MSA 28.287 to be without merit. There is no need to find that the front lawn is included in the definition of a dwelling house in this case. If defendant had been found guilty of arson of the Cedargrove house, such a determination would have been necessary. However, to prove attempted arson, the prosecution merely had to prove that defendant intended to burn the dwelling house, and that defendant acted in furtherance of that intent which went beyond mere preparation. *Jones*, *supra*, 443 Mich 100.

In this case, the fact that the molotov cocktail was thrown at the front window of the house and broke the window shows an intent to burn the dwelling house. The fact that the bottle was not able to penetrate the house does not negate the thrower's intent to burn the house, which would have been accomplished if not for the second window that impeded penetration into the house. As we previously found, there was sufficient evidence that defendant was the person who threw the molotov cocktail at the Cedargrove house, and there was also sufficient evidence that defendant intended to burn the house and took action in furtherance of that intent that went beyond mere preparation. Therefore, we find that there was no improper application of MCL 750.72; MSA 28.267 and MCL 750.92; MSA 28.287 in this case.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan